THE HON'BLE SRI JUSTICE N.V. RAMANA

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W.P. No. 4319 of 2007

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Oral order:

Assailing the Memo dated 07.08.2006 issued by the 1st respondent and the consequential Memo dated 05.02.2007, issued by the 2nd respondent, as illegal and arbitrary, and consequently direct the respondents to reinstate the petitioner into service with all consequential benefits, the petitioner filed the present writ petition.

By the said Memos, the respondents invoking the provisions of Regulation 28(3) of the APSEB Service Regulations, which were adopted by AP GENCO, deemed the petitioner to have resigned from service and ceased to be in their employment w.e.f. 12.01.2001.

The learned counsel for the petitioner submitted that the for the alleged misconduct of continuous absence of the petitioner, the respondents are entitled to initiate action, and impose only punishments that are enumerated under the APSEB (Discipline & Appeal) Regulations, and they could not have invoked the provisions of Regulation 28(3) of the APSEB Service Regulations, to deem the petitioner to have resigned from their service. In support of this argument, he placed reliance on two Division Bench judgments of this Court in W.A. No. 898 of 1995, dated 01.04.1997 and W.A. No. 1767 of 2005, dated 04.10.2005, and a learned Judge of this Court in W.P. No. 5630 of 2005, dated 04.07.2005.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents-AP GENCO.

In W.A. No. 898 of 1995, dated 01.04.1997, a Division Bench of this Court held that Regulation 28(3) of the APSEB Service Regulations, which provided for automatic cessation is invalid, and that for the alleged misconduct of remaining absent continuously, action can be taken strictly in accordance with law, in that he must be served with a memo of charges and afforded opportunity of being heard and after enquiry is concluded, the competent authority should decided whether to punish him or not, and if decision to punish him is taken, then what should be the quantum of punishment.

The learned Standing Counsel for the respondents fairly

admitted to the above legal position, and submitted that since the impugned order has been passed by the respondents invoking the wrong provision of law, the same cannot be sustained.

Since the respondents have passed the impugned orders without conducting any enquiry and by invoking the wrong provisions of Regulation 28(3) of the APSEB Service Regulations, which were held to be invalid, the same having regard to the judgments of this Court, referred to above, cannot be sustained. Hence, the impugned orders, passed by the respondents under Regulation 28(3) of the APSEB Service Regulations, deeming the petitioner to have resigned from service w.e.f. 12.01.2001, are set aside. This order, however, does not preclude the respondents from taking appropriate action against the petitioner under the APSEB (Discipline & Appeal) Regulations.

The writ petition is accordingly allowed. No costs.

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N.V. RAMANA, J.

Dated: 7th August, 2007
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